

§ 16.240

(2) Randomly select such crewmembers for testing at the highest percentage rate established for the calendar year by any DOT agency to which the marine employer is subject.

(k) An individual may not be engaged or employed, including self-employment, on a vessel in a position as master, operator, or person in charge for which a credential is required by law or regulation unless all crewmembers covered by this section are subject to the random testing requirements of this section.

[CGD 90-014, 56 FR 31034, July 8, 1991, as amended by 59 FR 62227, Dec. 2, 1994; USCG-2006-24371, 74 FR 11264, Mar. 16, 2009]

EDITORIAL NOTE: At 74 FR 11264, Mar. 16, 2009, § 16.230 was amended; however, a portion of the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 16.240 Serious marine incident testing requirements.

The marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06.

§ 16.250 Reasonable cause testing requirements.

(a) The marine employer shall require any crewmember engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ or be operated by an individual holding a credential issued under this subchapter, who is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs.

(b) The marine employer's decision to test must be based on a reasonable and articulable belief that the individual has used a dangerous drug based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the individual by two persons in supervisory positions.

(c) When the marine employer requires testing of an individual under the provisions of this section, the individual must be informed of that fact and directed to provide a urine speci-

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men as soon as practicable. This fact shall be entered in the vessel's official log book, if one is required.

(d) If an individual refuses to provide a urine specimen when directed to do so by the employer under the provisions of this section, this fact shall be entered in the vessel's official log book, if one is required.

[CGD 86-067, 53 FR 47079, Nov. 21, 1988, as amended by USCG-2006-24371, 74 FR 11264, Mar. 16, 2009]

§ 16.260 Records.

(a) Employers must maintain records of chemical tests as provided in 49 CFR 40.333 and must make these records available to Coast Guard officials upon request.

(b) The records shall be sufficient to:

- (1) Satisfy the requirements of §§ 16.210(b) and 16.220(c) of this part.

- (2) Identify the total number of individuals chemically tested annually for dangerous drugs in each of the categories of testing required by this part including the annual number of individuals failing chemical tests and the number and types of drugs for which individuals tested positive.

[CGD 86-067, 53 FR 47079, Nov. 21, 1988, as amended by CGD 91-223, 60 FR 4526, Jan. 23, 1995; USCG-2000-7759, 66 FR 42968, Aug. 16, 2001]

Subpart C [Reserved]

Subpart D—Employee Assistance Programs

§ 16.401 Employee Assistance Program (EAP).

The employer shall provide an Employee Assistance Program (EAP) for all crewmembers. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to a crewmember. Each EAP must include education and training on drug use for crewmembers and the employer's supervisory personnel as provided below:

(a) *EAP education program*: Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a